

NOT INCLUDED IN
BOUND VOLUMES

LPH
Moreno Valley, CA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

OZARK AUTOMOTIVE DISTRIBUTORS, INC.
d/b/a O'REILLY AUTO PARTS
Employer

and

Case 21-RC-21222

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN,
INDUSTRIAL AND ALLIED WORKERS OF
AMERICA, LOCAL 166, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CTW
Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board, by a three-member panel, has considered objections to an election held August 13, 2010, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 17 ballots for and 14 ballots against the Petitioner, with 1 void ballot and no challenged ballots.

The Board has reviewed the record in light of the exceptions and brief, has adopted the hearing officer's findings¹ and recommendations,² and finds that a certification of representative should be issued.

¹ The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Teamsters, Chauffeurs, Warehousemen, Industrial and Allied Workers of America, Local 166, International Brotherhood of Teamsters, CTW, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

INCLUDED: All full-time and regular part-time route drivers with a class A license employed by the Employer at its facility located at 24520 San Michele Road, Moreno Valley, California.

incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We find no basis for reversing the findings.

² The hearing officer granted the Petitioner's petitions to revoke the Employer's subpoenas duces tecum served on the Petitioner and employee Oscar Castillo. The subpoenas sought information about communications between the Petitioner and named employees, as well as unit employees as a group. The hearing officer cited the need to protect employee Sec. 7 rights, and her concerns regarding the subpoenas' irrelevance and breadth (they extended beyond the critical period). The Employer appealed the hearing officer's subpoena rulings. We find no merit in the Employer's appeal. Even assuming the information sought in the Employer's subpoenas had some relevance to the Employer's case, we find that there has been no showing that the Employer's need for any such information is paramount to the employees' confidentiality interests protected by Sec. 7 of the Act. See *National Telephone Directory Corp.*, 319 NLRB 420, 420-421 (1995) ("We find . . . that the confidentiality interests of employees who have . . . attended union meetings are paramount to the Respondent's need to obtain the identity of such employees for cross-examination and credibility impeachment purposes"). In the absence of a showing of a paramount need for the information, we find, contrary to our colleague, that the hearing officer's ruling correctly protected the employees' interests in keeping confidential their communication with a union, an important aspect of the employees' "engage[ment] in organizing." *Id.* at 421.

Member Hayes disagrees with his colleagues because he finds that the hearing officer failed to apply the correct test in revoking the subpoenas. The hearing officer was required to balance two legitimate interests -- the employees' confidentiality interests and the Employer's right to litigate its case. See, e. g. the judge's discussion in *ManorCare Health Services-Easton*, 356 NLRB No. 39, slip op. 33 (2010) ("Board precedent is clear that in considering this issue, I must balance the confidentiality interests of employees to engage in union activity . . . against the Respondent's right to full and effective cross-examination"). The hearing officer focused on the employees' interests and failed to consider the Employer's countervailing interests. Under these circumstances, Member Hayes thus finds that the hearing officer's subpoena rulings lack coherent analysis, and he is unable to conclude that they are correct. Accordingly, Member Hayes will not pass on the other issues in this case.

EXCLUDED: All other employees, city counter drivers, professional employees, guards and supervisors as defined in the Act.

Dated, Washington, D.C., March 31, 2011.

Wilma B. Liebman Chairman

Mark Gaston Pearce Member

Brian E. Hayes Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD